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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 65

Introduced by Assembly Members Achadjian and Lowenthal
(Principal coauthors: Assembly Members Bradford, Garcia, Gomez,
Mitchell, and Williams)

(Principal coauthor: Senator Hill)

(Coauthors: Assembly Members Alejo, Ammiano, Atkins, Bigelow,
Bloom, Blumenfield, Brown, Buchanan, Ian Calderon, Chávez,
Conway, Dahle, Daly, Dickinson, Donnelly, Frazier, Gatto,
Gordon, Gorell, Grove, Hagman, Hall, Harkey, Holden, Jones,
Levine, ~~Linder, Logue,~~ Linder, Logue, Maienschein, Mansoor,
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Perea, ~~John A. Pérez,~~ John A. Pérez, Quirk-Silva, Rendon,
Skinner, Stone, Ting, Wagner, Waldron, Weber, and Wilk)

(Coauthors: Senators Anderson, Berryhill, Block, Cannella, Emmerson,
Fuller, Gaines, Huff, Jackson, Knight, Lieu, Padilla, Rubio, Walters,
and Wyland)

January 7, 2013

An act to amend Sections ~~261, 286, 288a, and 289~~ *261 and 286* of the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 65, as amended, Achadjian. Crimes: sex crimes.

Existing law provides various circumstances that constitute rape, including an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator where the person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief. Existing law provides various circumstances that constitute sodomy against an individual's will, ~~oral copulation against an individual's will, and sexual penetration against an individual's will,~~ including an act accomplished with an individual who is not the spouse of the perpetrator where the individual submits under the belief that the individual committing the act is the victim's spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief.

This bill would instead provide that these types of ~~rape, sodomy, oral copulation, and sexual penetration~~ *rape and sodomy* occur where the person submits under the belief that the person committing the act is someone known to the victim other than the accused.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 261 of the Penal Code is amended to
- 2 read:
- 3 261. (a) Rape is an act of sexual intercourse accomplished
- 4 with a person not the spouse of the perpetrator, under any of the
- 5 following circumstances:

1 (1) Where a person is incapable, because of a mental disorder
2 or developmental or physical disability, of giving legal consent,
3 and this is known or reasonably should be known to the person
4 committing the act. Notwithstanding the existence of a
5 conservatorship pursuant to the provisions of the
6 Lanterman-Petris-Short Act (Part 1 (commencing with Section
7 5000) of Division 5 of the Welfare and Institutions Code), the
8 prosecuting attorney shall prove, as an element of the crime, that
9 a mental disorder or developmental or physical disability rendered
10 the alleged victim incapable of giving consent.

11 (2) Where it is accomplished against a person's will by means
12 of force, violence, duress, menace, or fear of immediate and
13 unlawful bodily injury on the person or another.

14 (3) Where a person is prevented from resisting by any
15 intoxicating or anesthetic substance, or any controlled substance,
16 and this condition was known, or reasonably should have been
17 known by the accused.

18 (4) Where a person is at the time unconscious of the nature of
19 the act, and this is known to the accused. As used in this paragraph,
20 "unconscious of the nature of the act" means incapable of resisting
21 because the victim meets any one of the following conditions:

22 (A) Was unconscious or asleep.

23 (B) Was not aware, knowing, perceiving, or cognizant that the
24 act occurred.

25 (C) Was not aware, knowing, perceiving, or cognizant of the
26 essential characteristics of the act due to the perpetrator's fraud in
27 fact.

28 (D) Was not aware, knowing, perceiving, or cognizant of the
29 essential characteristics of the act due to the perpetrator's fraudulent
30 representation that the sexual penetration served a professional
31 purpose when it served no professional purpose.

32 (5) Where a person submits under the belief that the person
33 committing the act is someone known to the victim other than the
34 accused, and this belief is induced by any artifice, pretense, or
35 concealment practiced by the accused, with intent to induce the
36 belief.

37 (6) Where the act is accomplished against the victim's will by
38 threatening to retaliate in the future against the victim or any other
39 person, and there is a reasonable possibility that the perpetrator
40 will execute the threat. As used in this paragraph, "threatening to

1 retaliate” means a threat to kidnap or falsely imprison, or to inflict
2 extreme pain, serious bodily injury, or death.

3 (7) Where the act is accomplished against the victim’s will by
4 threatening to use the authority of a public official to incarcerate,
5 arrest, or deport the victim or another, and the victim has a
6 reasonable belief that the perpetrator is a public official. As used
7 in this paragraph, “public official” means a person employed by
8 a governmental agency who has the authority, as part of that
9 position, to incarcerate, arrest, or deport another. The perpetrator
10 does not actually have to be a public official.

11 (b) As used in this section, “duress” means a direct or implied
12 threat of force, violence, danger, or retribution sufficient to coerce
13 a reasonable person of ordinary susceptibilities to perform an act
14 which otherwise would not have been performed, or acquiesce in
15 an act to which one otherwise would not have submitted. The total
16 circumstances, including the age of the victim, and his or her
17 relationship to the defendant, are factors to consider in appraising
18 the existence of duress.

19 (c) As used in this section, “menace” means any threat,
20 declaration, or act which shows an intention to inflict an injury
21 upon another.

22 SEC. 2. Section 286 of the Penal Code is amended to read:

23 286. (a) Sodomy is sexual conduct consisting of contact
24 between the penis of one person and the anus of another person.
25 Any sexual penetration, however slight, is sufficient to complete
26 the crime of sodomy.

27 (b) (1) Except as provided in Section 288, any person who
28 participates in an act of sodomy with another person who is under
29 18 years of age shall be punished by imprisonment in the state
30 prison, or in a county jail for not more than one year.

31 (2) Except as provided in Section 288, any person over 21 years
32 of age who participates in an act of sodomy with another person
33 who is under 16 years of age shall be guilty of a felony.

34 (c) (1) Any person who participates in an act of sodomy with
35 another person who is under 14 years of age and more than 10
36 years younger than he or she shall be punished by imprisonment
37 in the state prison for three, six, or eight years.

38 (2) (A) Any person who commits an act of sodomy when the
39 act is accomplished against the victim’s will by means of force,
40 violence, duress, menace, or fear of immediate and unlawful bodily

1 injury on the victim or another person shall be punished by
2 imprisonment in the state prison for three, six, or eight years.

3 (B) Any person who commits an act of sodomy with another
4 person who is under 14 years of age when the act is accomplished
5 against the victim's will by means of force, violence, duress,
6 menace, or fear of immediate and unlawful bodily injury on the
7 victim or another person shall be punished by imprisonment in the
8 state prison for 9, 11, or 13 years.

9 (C) Any person who commits an act of sodomy with another
10 person who is a minor 14 years of age or older when the act is
11 accomplished against the victim's will by means of force, violence,
12 duress, menace, or fear of immediate and unlawful bodily injury
13 on the victim or another person shall be punished by imprisonment
14 in the state prison for 7, 9, or 11 years.

15 (D) This paragraph does not preclude prosecution under Section
16 269, Section 288.7, or any other provision of law.

17 (3) Any person who commits an act of sodomy where the act
18 is accomplished against the victim's will by threatening to retaliate
19 in the future against the victim or any other person, and there is a
20 reasonable possibility that the perpetrator will execute the threat,
21 shall be punished by imprisonment in the state prison for three,
22 six, or eight years.

23 (d) (1) Any person who, while voluntarily acting in concert
24 with another person, either personally or aiding and abetting that
25 other person, commits an act of sodomy when the act is
26 accomplished against the victim's will by means of force or fear
27 of immediate and unlawful bodily injury on the victim or another
28 person or where the act is accomplished against the victim's will
29 by threatening to retaliate in the future against the victim or any
30 other person, and there is a reasonable possibility that the
31 perpetrator will execute the threat, shall be punished by
32 imprisonment in the state prison for five, seven, or nine years.

33 (2) Any person who, while voluntarily acting in concert with
34 another person, either personally or aiding and abetting that other
35 person, commits an act of sodomy upon a victim who is under 14
36 years of age, when the act is accomplished against the victim's
37 will by means of force or fear of immediate and unlawful bodily
38 injury on the victim or another person, shall be punished by
39 imprisonment in the state prison for 10, 12, or 14 years.

1 (3) Any person who, while voluntarily acting in concert with
2 another person, either personally or aiding and abetting that other
3 person, commits an act of sodomy upon a victim who is a minor
4 14 years of age or older, when the act is accomplished against the
5 victim's will by means of force or fear of immediate and unlawful
6 bodily injury on the victim or another person, shall be punished
7 by imprisonment in the state prison for 7, 9, or 11 years.

8 (4) This subdivision does not preclude prosecution under Section
9 269, Section 288.7, or any other provision of law.

10 (e) Any person who participates in an act of sodomy with any
11 person of any age while confined in any state prison, as defined
12 in Section 4504, or in any local detention facility, as defined in
13 Section 6031.4, shall be punished by imprisonment in the state
14 prison, or in a county jail for not more than one year.

15 (f) Any person who commits an act of sodomy, and the victim
16 is at the time unconscious of the nature of the act and this is known
17 to the person committing the act, shall be punished by
18 imprisonment in the state prison for three, six, or eight years. As
19 used in this subdivision, "unconscious of the nature of the act"
20 means incapable of resisting because the victim meets one of the
21 following conditions:

22 (1) Was unconscious or asleep.

23 (2) Was not aware, knowing, perceiving, or cognizant that the
24 act occurred.

25 (3) Was not aware, knowing, perceiving, or cognizant of the
26 essential characteristics of the act due to the perpetrator's fraud in
27 fact.

28 (4) Was not aware, knowing, perceiving, or cognizant of the
29 essential characteristics of the act due to the perpetrator's fraudulent
30 representation that the sexual penetration served a professional
31 purpose when it served no professional purpose.

32 (g) Except as provided in subdivision (h), a person who commits
33 an act of sodomy, and the victim is at the time incapable, because
34 of a mental disorder or developmental or physical disability, of
35 giving legal consent, and this is known or reasonably should be
36 known to the person committing the act, shall be punished by
37 imprisonment in the state prison for three, six, or eight years.
38 Notwithstanding the existence of a conservatorship pursuant to
39 the Lanterman-Petris-Short Act (Part 1 (commencing with Section
40 5000) of Division 5 of the Welfare and Institutions Code), the

1 prosecuting attorney shall prove, as an element of the crime, that
2 a mental disorder or developmental or physical disability rendered
3 the alleged victim incapable of giving consent.

4 (h) Any person who commits an act of sodomy, and the victim
5 is at the time incapable, because of a mental disorder or
6 developmental or physical disability, of giving legal consent, and
7 this is known or reasonably should be known to the person
8 committing the act, and both the defendant and the victim are at
9 the time confined in a state hospital for the care and treatment of
10 the mentally disordered or in any other public or private facility
11 for the care and treatment of the mentally disordered approved by
12 a county mental health director, shall be punished by imprisonment
13 in the state prison, or in a county jail for not more than one year.
14 Notwithstanding the existence of a conservatorship pursuant to
15 the Lanterman-Petris-Short Act (Part 1 (commencing with Section
16 5000) of Division 5 of the Welfare and Institutions Code), the
17 prosecuting attorney shall prove, as an element of the crime, that
18 a mental disorder or developmental or physical disability rendered
19 the alleged victim incapable of giving legal consent.

20 (i) Any person who commits an act of sodomy, where the victim
21 is prevented from resisting by an intoxicating or anesthetic
22 substance, or any controlled substance, and this condition was
23 known, or reasonably should have been known by the accused,
24 shall be punished by imprisonment in the state prison for three,
25 six, or eight years.

26 (j) Any person who commits an act of sodomy, where the victim
27 submits under the belief that the person committing the act is
28 someone known to the victim other than the accused, and this
29 belief is induced by any artifice, pretense, or concealment practiced
30 by the accused, with intent to induce the belief, shall be punished
31 by imprisonment in the state prison for three, six, or eight years.

32 (k) Any person who commits an act of sodomy, where the act
33 is accomplished against the victim's will by threatening to use the
34 authority of a public official to incarcerate, arrest, or deport the
35 victim or another, and the victim has a reasonable belief that the
36 perpetrator is a public official, shall be punished by imprisonment
37 in the state prison for three, six, or eight years.

38 As used in this subdivision, "public official" means a person
39 employed by a governmental agency who has the authority, as part

1 of that position, to incarcerate, arrest, or deport another. The
2 perpetrator does not actually have to be a public official.

3 (l) As used in subdivisions (c) and (d), “threatening to retaliate”
4 means a threat to kidnap or falsely imprison, or inflict extreme
5 pain, serious bodily injury, or death.

6 (m) In addition to any punishment imposed under this section,
7 the judge may assess a fine not to exceed seventy dollars (\$70)
8 against any person who violates this section, with the proceeds of
9 this fine to be used in accordance with Section 1463.23. The court,
10 however, shall take into consideration the defendant’s ability to
11 pay, and no defendant shall be denied probation because of his or
12 her inability to pay the fine permitted under this subdivision.

13 ~~SEC. 3.—Section 288a of the Penal Code is amended to read:~~

14 ~~288a. (a) Oral copulation is the act of copulating the mouth~~
15 ~~of one person with the sexual organ or anus of another person.~~

16 ~~(b) (1) Except as provided in Section 288, any person who~~
17 ~~participates in an act of oral copulation with another person who~~
18 ~~is under 18 years of age shall be punished by imprisonment in the~~
19 ~~state prison, or in a county jail for a period of not more than one~~
20 ~~year.~~

21 ~~(2) Except as provided in Section 288, any person over 21 years~~
22 ~~of age who participates in an act of oral copulation with another~~
23 ~~person who is under 16 years of age is guilty of a felony.~~

24 ~~(c) (1) Any person who participates in an act of oral copulation~~
25 ~~with another person who is under 14 years of age and more than~~
26 ~~10 years younger than he or she shall be punished by imprisonment~~
27 ~~in the state prison for three, six, or eight years.~~

28 ~~(2) (A) Any person who commits an act of oral copulation when~~
29 ~~the act is accomplished against the victim’s will by means of force,~~
30 ~~violence, duress, menace, or fear of immediate and unlawful bodily~~
31 ~~injury on the victim or another person shall be punished by~~
32 ~~imprisonment in the state prison for three, six, or eight years.~~

33 ~~(B) Any person who commits an act of oral copulation upon a~~
34 ~~person who is under 14 years of age, when the act is accomplished~~
35 ~~against the victim’s will by means of force, violence, duress,~~
36 ~~menace, or fear of immediate and unlawful bodily injury on the~~
37 ~~victim or another person, shall be punished by imprisonment in~~
38 ~~the state prison for 8, 10, or 12 years.~~

39 ~~(C) Any person who commits an act of oral copulation upon a~~
40 ~~minor who is 14 years of age or older, when the act is accomplished~~

1 against the victim's will by means of force, violence, duress,
2 menace, or fear of immediate and unlawful bodily injury on the
3 victim or another person, shall be punished by imprisonment in
4 the state prison for 6, 8, or 10 years.

5 (D) This paragraph does not preclude prosecution under Section
6 269, Section 288.7, or any other provision of law.

7 (3) Any person who commits an act of oral copulation where
8 the act is accomplished against the victim's will by threatening to
9 retaliate in the future against the victim or any other person, and
10 there is a reasonable possibility that the perpetrator will execute
11 the threat, shall be punished by imprisonment in the state prison
12 for three, six, or eight years.

13 (d) (1) Any person who, while voluntarily acting in concert
14 with another person, either personally or by aiding and abetting
15 that other person, commits an act of oral copulation (A) when the
16 act is accomplished against the victim's will by means of force or
17 fear of immediate and unlawful bodily injury on the victim or
18 another person, or (B) where the act is accomplished against the
19 victim's will by threatening to retaliate in the future against the
20 victim or any other person, and there is a reasonable possibility
21 that the perpetrator will execute the threat, or (C) where the victim
22 is at the time incapable, because of a mental disorder or
23 developmental or physical disability, of giving legal consent, and
24 this is known or reasonably should be known to the person
25 committing the act, shall be punished by imprisonment in the state
26 prison for five, seven, or nine years. Notwithstanding the
27 appointment of a conservator with respect to the victim pursuant
28 to the provisions of the Lanterman-Petris-Short Act (Part 1
29 (commencing with Section 5000) of Division 5 of the Welfare and
30 Institutions Code), the prosecuting attorney shall prove, as an
31 element of the crime described under paragraph (3), that a mental
32 disorder or developmental or physical disability rendered the
33 alleged victim incapable of giving legal consent.

34 (2) Any person who, while voluntarily acting in concert with
35 another person, either personally or aiding and abetting that other
36 person, commits an act of oral copulation upon a victim who is
37 under 14 years of age, when the act is accomplished against the
38 victim's will by means of force or fear of immediate and unlawful
39 bodily injury on the victim or another person, shall be punished
40 by imprisonment in the state prison for 10, 12, or 14 years.

~~(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.~~

~~(4) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.~~

~~(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.~~

~~(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:~~

~~(1) Was unconscious or asleep.~~

~~(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.~~

~~(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.~~

~~(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the oral copulation served a professional purpose when it served no professional purpose.~~

~~(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the~~

1 ~~Lanterman-Petris-Short Act (Part 1 (commencing with Section~~
2 ~~5000) of Division 5 of the Welfare and Institutions Code), the~~
3 ~~prosecuting attorney shall prove, as an element of the crime, that~~
4 ~~a mental disorder or developmental or physical disability rendered~~
5 ~~the alleged victim incapable of giving consent.~~

6 ~~(h) Any person who commits an act of oral copulation, and the~~
7 ~~victim is at the time incapable, because of a mental disorder or~~
8 ~~developmental or physical disability, of giving legal consent, and~~
9 ~~this is known or reasonably should be known to the person~~
10 ~~committing the act, and both the defendant and the victim are at~~
11 ~~the time confined in a state hospital for the care and treatment of~~
12 ~~the mentally disordered or in any other public or private facility~~
13 ~~for the care and treatment of the mentally disordered approved by~~
14 ~~a county mental health director, shall be punished by imprisonment~~
15 ~~in the state prison, or in a county jail for a period of not more than~~
16 ~~one year. Notwithstanding the existence of a conservatorship~~
17 ~~pursuant to the provisions of the Lanterman-Petris-Short Act (Part~~
18 ~~1 (commencing with Section 5000) of Division 5 of the Welfare~~
19 ~~and Institutions Code), the prosecuting attorney shall prove, as an~~
20 ~~element of the crime, that a mental disorder or developmental or~~
21 ~~physical disability rendered the alleged victim incapable of giving~~
22 ~~legal consent.~~

23 ~~(i) Any person who commits an act of oral copulation, where~~
24 ~~the victim is prevented from resisting by any intoxicating or~~
25 ~~anesthetic substance, or any controlled substance, and this condition~~
26 ~~was known, or reasonably should have been known by the accused,~~
27 ~~shall be punished by imprisonment in the state prison for a period~~
28 ~~of three, six, or eight years.~~

29 ~~(j) Any person who commits an act of oral copulation, where~~
30 ~~the victim submits under the belief that the person committing the~~
31 ~~act is someone known to the victim other than the accused, and~~
32 ~~this belief is induced by any artifice, pretense, or concealment~~
33 ~~practiced by the accused, with intent to induce the belief, shall be~~
34 ~~punished by imprisonment in the state prison for a period of three,~~
35 ~~six, or eight years.~~

36 ~~(k) Any person who commits an act of oral copulation, where~~
37 ~~the act is accomplished against the victim's will by threatening to~~
38 ~~use the authority of a public official to incarcerate, arrest, or deport~~
39 ~~the victim or another, and the victim has a reasonable belief that~~
40 ~~the perpetrator is a public official, shall be punished by~~

1 imprisonment in the state prison for a period of three, six, or eight
2 years.

3 As used in this subdivision, “public official” means a person
4 employed by a governmental agency who has the authority, as part
5 of that position, to incarcerate, arrest, or deport another. The
6 perpetrator does not actually have to be a public official.

7 (l) As used in subdivisions (c) and (d), “threatening to retaliate”
8 means a threat to kidnap or falsely imprison, or to inflict extreme
9 pain, serious bodily injury, or death.

10 (m) In addition to any punishment imposed under this section,
11 the judge may assess a fine not to exceed seventy dollars (\$70)
12 against any person who violates this section, with the proceeds of
13 this fine to be used in accordance with Section 1463.23. The court
14 shall, however, take into consideration the defendant’s ability to
15 pay, and no defendant shall be denied probation because of his or
16 her inability to pay the fine permitted under this subdivision.

17 SEC. 4. Section 289 of the Penal Code is amended to read:

18 289. (a) (1) (A) Any person who commits an act of sexual
19 penetration when the act is accomplished against the victim’s will
20 by means of force, violence, duress, menace, or fear of immediate
21 and unlawful bodily injury on the victim or another person shall
22 be punished by imprisonment in the state prison for three, six, or
23 eight years.

24 (B) Any person who commits an act of sexual penetration upon
25 a child who is under 14 years of age, when the act is accomplished
26 against the victim’s will by means of force, violence, duress,
27 menace, or fear of immediate and unlawful bodily injury on the
28 victim or another person, shall be punished by imprisonment in
29 the state prison for 8, 10, or 12 years.

30 (C) Any person who commits an act of sexual penetration upon
31 a minor who is 14 years of age or older, when the act is
32 accomplished against the victim’s will by means of force, violence,
33 duress, menace, or fear of immediate and unlawful bodily injury
34 on the victim or another person, shall be punished by imprisonment
35 in the state prison for 6, 8, or 10 years.

36 (D) This paragraph does not preclude prosecution under Section
37 269, Section 288.7, or any other provision of law.

38 (2) Any person who commits an act of sexual penetration when
39 the act is accomplished against the victim’s will by threatening to
40 retaliate in the future against the victim or any other person, and

1 ~~there is a reasonable possibility that the perpetrator will execute~~
2 ~~the threat, shall be punished by imprisonment in the state prison~~
3 ~~for three, six, or eight years.~~

4 ~~(b) Except as provided in subdivision (c), any person who~~
5 ~~commits an act of sexual penetration, and the victim is at the time~~
6 ~~incapable, because of a mental disorder or developmental or~~
7 ~~physical disability, of giving legal consent, and this is known or~~
8 ~~reasonably should be known to the person committing the act or~~
9 ~~causing the act to be committed, shall be punished by imprisonment~~
10 ~~in the state prison for three, six, or eight years. Notwithstanding~~
11 ~~the appointment of a conservator with respect to the victim pursuant~~
12 ~~to the provisions of the Lanterman-Petris-Short Act (Part 1~~
13 ~~(commencing with Section 5000) of Division 5 of the Welfare and~~
14 ~~Institutions Code), the prosecuting attorney shall prove, as an~~
15 ~~element of the crime, that a mental disorder or developmental or~~
16 ~~physical disability rendered the alleged victim incapable of giving~~
17 ~~legal consent.~~

18 ~~(c) Any person who commits an act of sexual penetration, and~~
19 ~~the victim is at the time incapable, because of a mental disorder~~
20 ~~or developmental or physical disability, of giving legal consent,~~
21 ~~and this is known or reasonably should be known to the person~~
22 ~~committing the act or causing the act to be committed and both~~
23 ~~the defendant and the victim are at the time confined in a state~~
24 ~~hospital for the care and treatment of the mentally disordered or~~
25 ~~in any other public or private facility for the care and treatment of~~
26 ~~the mentally disordered approved by a county mental health~~
27 ~~director, shall be punished by imprisonment in the state prison, or~~
28 ~~in a county jail for a period of not more than one year.~~
29 ~~Notwithstanding the existence of a conservatorship pursuant to~~
30 ~~the provisions of the Lanterman-Petris-Short Act (Part 1~~
31 ~~(commencing with Section 5000) of Division 5 of the Welfare and~~
32 ~~Institutions Code), the prosecuting attorney shall prove, as an~~
33 ~~element of the crime, that a mental disorder or developmental or~~
34 ~~physical disability rendered the alleged victim incapable of giving~~
35 ~~legal consent.~~

36 ~~(d) Any person who commits an act of sexual penetration, and~~
37 ~~the victim is at the time unconscious of the nature of the act and~~
38 ~~this is known to the person committing the act or causing the act~~
39 ~~to be committed, shall be punished by imprisonment in the state~~
40 ~~prison for three, six, or eight years. As used in this subdivision,~~

1 “unconscious of the nature of the act” means incapable of resisting
2 because the victim meets one of the following conditions:

3 (1) ~~Was unconscious or asleep.~~

4 (2) ~~Was not aware, knowing, perceiving, or cognizant that the~~
5 ~~act occurred.~~

6 (3) ~~Was not aware, knowing, perceiving, or cognizant of the~~
7 ~~essential characteristics of the act due to the perpetrator’s fraud in~~
8 ~~fact.~~

9 (4) ~~Was not aware, knowing, perceiving, or cognizant of the~~
10 ~~essential characteristics of the act due to the perpetrator’s fraudulent~~
11 ~~representation that the sexual penetration served a professional~~
12 ~~purpose when it served no professional purpose.~~

13 (e) ~~Any person who commits an act of sexual penetration when~~
14 ~~the victim is prevented from resisting by any intoxicating or~~
15 ~~anesthetic substance, or any controlled substance, and this condition~~
16 ~~was known, or reasonably should have been known by the accused,~~
17 ~~shall be punished by imprisonment in the state prison for a period~~
18 ~~of three, six, or eight years.~~

19 (f) ~~Any person who commits an act of sexual penetration when~~
20 ~~the victim submits under the belief that the person committing the~~
21 ~~act or causing the act to be committed is someone known to the~~
22 ~~victim other than the accused, and this belief is induced by any~~
23 ~~artifice, pretense, or concealment practiced by the accused, with~~
24 ~~intent to induce the belief, shall be punished by imprisonment in~~
25 ~~the state prison for a period of three, six, or eight years.~~

26 (g) ~~Any person who commits an act of sexual penetration when~~
27 ~~the act is accomplished against the victim’s will by threatening to~~
28 ~~use the authority of a public official to incarcerate, arrest, or deport~~
29 ~~the victim or another, and the victim has a reasonable belief that~~
30 ~~the perpetrator is a public official, shall be punished by~~
31 ~~imprisonment in the state prison for a period of three, six, or eight~~
32 ~~years.~~

33 As used in this subdivision, “public official” means a person
34 employed by a governmental agency who has the authority, as part
35 of that position, to incarcerate, arrest, or deport another. The
36 perpetrator does not actually have to be a public official.

37 (h) ~~Except as provided in Section 288, any person who~~
38 ~~participates in an act of sexual penetration with another person~~
39 ~~who is under 18 years of age shall be punished by imprisonment~~

1 in the state prison or in a county jail for a period of not more than
2 one year.

3 (i) Except as provided in Section 288, any person over the age
4 of 21 years who participates in an act of sexual penetration with
5 another person who is under 16 years of age shall be guilty of a
6 felony.

7 (j) Any person who participates in an act of sexual penetration
8 with another person who is under 14 years of age and who is more
9 than 10 years younger than he or she shall be punished by
10 imprisonment in the state prison for three, six, or eight years.

11 (k) As used in this section:

12 (1) “Sexual penetration” is the act of causing the penetration,
13 however slight, of the genital or anal opening of any person or
14 causing another person to so penetrate the defendant’s or another
15 person’s genital or anal opening for the purpose of sexual arousal,
16 gratification, or abuse by any foreign object, substance, instrument,
17 or device, or by any unknown object.

18 (2) “Foreign object, substance, instrument, or device” shall
19 include any part of the body, except a sexual organ.

20 (3) “Unknown object” shall include any foreign object,
21 substance, instrument, or device, or any part of the body, including
22 a penis, when it is not known whether penetration was by a penis
23 or by a foreign object, substance, instrument, or device, or by any
24 other part of the body.

25 (l) As used in subdivision (a), “threatening to retaliate” means
26 a threat to kidnap or falsely imprison, or inflict extreme pain,
27 serious bodily injury or death.

28 (m) As used in this section, “victim” includes any person who
29 the defendant causes to penetrate the genital or anal opening of
30 the defendant or another person or whose genital or anal opening
31 is caused to be penetrated by the defendant or another person and
32 who otherwise qualifies as a victim under the requirements of this
33 section.

34 ~~SEC. 5.~~

35 *SEC. 3.* No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

4 ~~SEC. 6.~~

5 *SEC. 4.* This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety within
7 the meaning of Article IV of the Constitution and shall go into
8 immediate effect. The facts constituting the necessity are:

9 In order to protect the public from the danger of rape *and sodomy*
10 by those who impersonate others, at the earliest possible time, it
11 is necessary that this act take effect immediately.

O